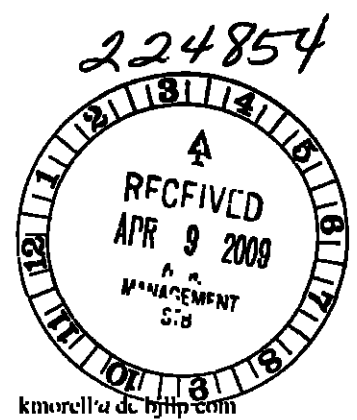


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KARL MORELL



April 9, 2009

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

FEE RECEIVED

APR 09 2009

**SURFACE
TRANSPORTATION BOARD**

FILED

APR 09 2009

**SURFACE
TRANSPORTATION BOARD**

Re: STB Finance Docket No. 35238 (Sub-No. 1), BNSF Railway
Company – Temporary Trackage Rights Exemption – Union
Pacific Railroad Company

Dear Acting Secretary Quinlan:

Attached for filing with the Board please find the original and ten copies of the Petition For Partial Revocation Of Trackage Rights Class Exemption. Enclosed is a check in the amount of \$200 to cover the filing fee.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me

Sincerely yours,

Karl Morell

Enclosures

cc: Gabriel S. Meyer, Esq. - UP

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Office of Proceedings

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35238 (SUB-NO. 1)

BNSF RAILWAY COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

PETITION FOR PARTIAL REVOCATION OF
TRACKAGE RIGHTS CLASS EXEMPTION

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**SURFACE
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Attorneys for:
BNSF Railway Company

Dated: April 9, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35238 (SUB-NO. 1)

BNSF RAILWAY COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

PETITION FOR PARTIAL REVOCATION OF
TRACKAGE RIGHTS CLASS EXEMPTION

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121, BNSF Railway Company ("BNSF"), hereby seeks partial revocation of the Surface Transportation Board's ("Board") trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), as necessary to permit the trackage rights arrangement exempted in STB Finance Docket No. 35238 to expire at midnight on December 31, 2009.¹ Revoking the class exemption, in part, to limit the term of the trackage rights is consistent with the Rail Transportation Policy of 49 U.S.C. § 10101, and the limited scope of the trackage rights transaction previously exempted.

DISCUSSION

Concurrently with this Petition, BNSF is filing a Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7), for temporary trackage rights over two rail lines owned by Union Pacific

¹ Because the trackage rights covered by the Notice of Exemption in STB Finance Docket No. 35238, are "local" rather than "overhead" rights, the Board's class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8) is not applicable to that transaction.

Railroad Company ("UP") The agreement between BNSF and UP grants BNSF restricted, temporary trackage rights over the UP rail lines located between: (1) UP Milepost 93.2, at Stockton, CA, on UP's Oakland Subdivision, and UP Milepost 219.4, at Elsey, CA, on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP Milepost 219.4, at Elsey, CA, on UP's Canyon Subdivision, and UP Milepost 280.7, at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles. The use of the trackage rights lines by BNSF is restricted to movements of BNSF unit ballast trains (loaded and empty) to and from the ballast pit located at Elsey, CA. The trackage rights are temporary in nature and will expire midnight December 31, 2009.

While BNSF and UP have expressly agreed that these trackage rights are only temporary, trackage rights authorized under the class exemption remain effective indefinitely, regardless of the duration provided for in the agreement. *See e g*, Finance Docket No. 33712 (Sub-No. 1), *Union Pacific Railroad Company – Trackage Rights Exemption The Burlington Northern and Santa Fe Railway Company*, (not printed), served March 12, 1999. Accordingly, BNSF is filing this Petition to permit the trackage rights to expire as provided in the underlying Temporary Trackage Rights Agreement.

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

The Board and its predecessor have granted petitions to permit temporary trackage rights to expire (either as exemptions or partial revocations) similar to that sought here. See STB Finance Docket No. 34082 (Sub-No. 1), *Union Pacific Railroad Company – Trackage Rights Exemption – The Burlington Northern and Santa Fe Railway Company* (not printed), served September 13, 2001; STB Finance Docket No. 34036 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company – Trackage Rights Exemption – Union Pacific Railroad Company* (not printed), served June 6, 2001; Finance Docket No. 32959 (Sub-No. 1), *Union Pacific Railroad Company – Trackage Rights Exemption – Chicago, Central & Pacific Railroad Company* (not printed), served July 25, 1996.

BNSF's trackage rights are being authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). Allowing the trackage rights to expire in accordance with the underlying agreement would be consistent with the exemption standards of 49 U.S.C. § 10502. Limiting the term of the trackage rights would promote the rail transportation policy of 49 U.S.C. § 10101 by ensuring efficient rail service to and from the ballast pit at Elsey, CA. Limiting the term of the trackage rights also is consistent with the limited scope of the transaction in STB Finance Docket No. 35238, and will have no adverse impact on shippers. Shippers will not lose access to any rail service or competitive options already in existence. The temporary trackage rights will be used solely for the movement of loaded and empty ballast trains for use in BNSF's maintenance-of-way projects. As previously noted, the temporary nature of the trackage rights is a key part of the agreement between BNSF and UP. Denial of the Petition would force BNSF to file for

discontinuance authority, thereby frustrating the benefits of the interim arrangement between the parties.

The applicable labor protective conditions for the discontinuance of the temporary trackage rights pursuant to this petition are those imposed in *Oregon Short Line Railroad Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

In conclusion, BNSF respectfully requests the Board to partially revoke the trackage rights class exemption to the extent necessary to permit the trackage rights authorized in STB Finance Docket No. 35238 to expire midnight on December 31, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

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Attorneys for:
BNSF Railway Company

Dated: April 9, 2009